

REPRESENTATIVE FOR PETITIONER:
Richard L. Brandenburg, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Andrew J. Smethers, Residential Team Leader, Allen County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Richard Brandenburg,)	Petition No.: 02-074-19-1-5-00704-19
)	
Petitioner,)	Parcel No.: 02-12-24-453-006.000-074
)	
v.)	
)	County: Allen
Allen County Assessor,)	
)	
Respondent.)	Assessment Year: 2019

Appeal from the Final Determination of the
Allen County Property Tax Assessment Board of Appeals

April 30, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Respondent had the burden to prove the 2019 assessment was correct. Did the Respondent prove the assessment was correct?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2019 assessment appeal with the Allen County Assessor on May 7, 2019. On August 20, 2019, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioner requested. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On January 30, 2020, Joseph Stanford, the Board's designated administrative law judge (ALJ), held a hearing. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Richard Brandenburg appeared *pro se* and was sworn. County employee Andrew Smethers appeared for the Respondent and was sworn. Jason Furge, Real Estate Appraisal Deputy for the county, was sworn as a witness for the Respondent but did not testify.
5. The Petitioner did not offer any exhibits.
6. The Respondent offered the following exhibits:¹

Respondent Exhibit A:	Subject property record card,
Respondent Exhibit B:	Aerial photograph of the subject property,
Respondent Exhibit C:	Sales-comparison analysis,
Respondent Exhibit C.1:	THE APPRAISAL OF REAL ESTATE (14 th ed.), APPRAISAL INSTITUTE, pp. 401-402,
Respondent Exhibit D:	Listing and description of the types of invalid sales,
Respondent Exhibit E:	Aerial photograph of comparable properties,
Respondent Exhibit F:	Color-coded map of the subject property's neighborhood and surrounding neighborhoods,
Respondent Exhibit G:	Neighborhood parcel data summary,
Respondent Exhibit H:	Neighborhood individual parcel data,

¹ The Respondent's evidence binder also included a page detailing Mr. Smether's experience and qualifications, an introduction, and a conclusion.

Respondent Exhibit I: 2018 price per square foot analysis for properties located in Popular, Sunny Acres, and Schapers C neighborhoods,²

Respondent Exhibit J: 2018 price per square foot analysis in the “Petitioner’s defined comparable area,”

Respondent Exhibit K: 2016-2018 data regarding sale types in the “Petitioner’s defined comparable area.”

7. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders and notices issued by the Board or ALJ, and (3) the digital recording of the hearing and these findings and conclusions.
8. The residential property under appeal is located at 1025 East Paulding Road in Fort Wayne.
9. The PTABOA determined the 2019 assessment was \$63,500 (land \$5,300 and improvements \$58,200).
10. The Petitioner did not request a specific assessment.

PETITIONER’S CONTENTIONS

11. The subject property is over-assessed. The assessment more than doubled from \$30,900 in 2017 to \$63,500 in 2019. The 2019 assessment increased “for no reason and with no improvements.” In assessing the property, the Respondent improperly compared it to properties in superior surrounding neighborhoods and failed to consider the overall poor condition of the subject property’s neighborhood. While “the ground” in Popular Addition may be comparable to the surrounding neighborhoods, the homes are not. *Brandenburg argument (referencing Resp’t Ex. A).*
12. The subject property is an old farmhouse located in Popular Addition. The home was built in 1935. Most of the homes in Popular Addition were built between 1925 and 1935

² For the most part, including on the subject property record card, this neighborhood is referred to as “Popular.” Thus, herein the Board will refer to it as “Popular.” In at least one instance in the record, as in Respondent’s Exhibit I, it is referred to as “Poplar.”

and are generally in poor condition. Surrounding neighborhoods such as Schapers C and Mount Vernon Park are comprised of “conventional homes” built in the 1950s and 1960s. These newer homes are worth more than the homes in Popular Addition. *Brandenburg argument (referencing Resp’t Ex. F).*

13. Several homes in Popular Addition have sold for less than the subject property’s current assessment. For example, a home located three blocks away is listed for sale at \$10,900. *Brandenburg argument.*

RESPONDENT’S CONTENTIONS

14. The Respondent agrees the current assessment is excessive. The 1,536 square foot home situated on a 1.53-acre lot was analyzed from “many different angles” and according to the analysis the 2019 assessment should be reduced from \$63,500 to \$55,500. *Smethers argument; Resp’t Ex. G, I.*
15. In developing the analysis, the Respondent first estimated the value using the sales-comparison approach. Mr. Smethers selected three properties that sold in the same neighborhood as the subject property. These properties are in close proximity to the subject property and therefore experience all of the negative externalities of the neighborhood. According to Mr. Smethers, these negative externalities include a high crime rate, the existence of rental properties, and various mobile home parks. *Smethers testimony; Resp’t Ex. C, E.*
16. Mr. Smethers made positive and negative adjustments to his comparable sales to account for differences between the properties. Adjustments were made for differences in size, foundation type, attic finish, garage type, fireplace, exterior features, grade, and effective age. Mr. Smethers’ analysis also includes a line for the number of bedrooms, but no adjustments were made to account for differences. The adjustments made were derived from the Department of Local Government Finance (DLGF) cost tables. Those costs are “depreciated based on the age of the home (and) localized by the location cost multiplier which relates (the costs) back to the market.” *Smethers testimony; Resp’t Ex. C, C.I.*

17. Mr. Smethers acknowledged that cost and value are not necessarily synonymous. However, in instances like this where there is limited sales activity cost-related adjustments are most persuasive. For example, while a new garage may cost \$20,000 to construct, the depreciated and localized cost results in an adjustment of only \$4,990. Ultimately, Mr. Smethers estimated a January 1, 2019, value of \$66,700 under his sales-comparison approach. *Smethers testimony; Resp't Ex. C, C.1.*
18. Mr. Smethers also performed a price per square foot analysis. In the first part of the analysis, he selected four sales from neighborhoods he deemed comparable. Those neighborhoods include Popular, Sunny Acres, and Schapers C. In performing this analysis, Mr. Smethers applied as much of an “apples-to-apples” comparison as possible regarding features that would affect the price per square foot, such as foundation types and story height. The four sales he utilized indicated a price per square foot range of \$39.39 to \$58.86, with an average of \$49.01. Mr. Smethers recommends an assessment for the subject property of \$36.13 per square foot, or \$55,500. *Smethers testimony; Resp't Ex. G, I.*
19. In the second part of the price per square foot analysis, Mr. Smethers used 19 sales from the area the Petitioner defined as comparable during the informal meetings. This area included nine different neighborhoods. The sales considered were all verified as valid by his staff, and therefore should not be considered hearsay. In this analysis, the average price per square foot was \$36.36, and the average for a one-story home with a basement was \$43.29. Again, Mr. Smethers’ recommended an assessment of \$36.13 per square foot, or \$55,500. This value conclusion is conservative and fair. There is no market evidence supporting a lower value. *Smethers testimony; Resp't Ex. J.*
20. Finally, Mr. Smethers argued if the Board does not find probative value in each analysis on their own, the preponderance of the evidence on the whole is sufficient to make a prima facie case. *Smethers argument.*

BURDEN OF PROOF

21. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.
22. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
23. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
24. Here, the parties agree the Respondent has the burden of proof. The assessment increased from \$52,200 in 2018 to \$63,500 in 2019, an increase of 21.6%. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden is on the Respondent.

ANALYSIS

25. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
26. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
27. As previously discussed the Respondent has the burden of proof in this case. In an attempt to meet that burden, the Respondent first offered a sales-comparison analysis. Mr. Smethers selected three purportedly comparable properties, and adjusted for differences between the properties using the DLGF cost tables, and those costs were adjusted to account for depreciation and location. According to Mr. Smethers, cost-based adjustments are appropriate where valid sales data is scarce. This analysis yielded an estimated value of \$66,700.
28. While the adjustments in Mr. Smethers' analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies he/she complied with Uniform Standards of Professional Appraisal Practice (USPAP). Thus, the Board, as the trier-of-fact, can infer the appraiser used objective data, where available, to quantify the adjustments. And where objective data was not available, the Board can infer that the appraiser relied on education, training, and experience to

estimate a reliable quantification. There is no evidence that Mr. Smethers is a licensed appraiser in Indiana. Moreover, he did not establish that the analysis he prepared complies with generally accepted appraisal practice or USPAP. The Board therefore finds that the Respondent's sales-comparison analysis is insufficiently reliable to be probative of the market value-in-use.

29. In any event, Mr. Smethers did not rely on his sales-comparison analysis for his recommended value of \$55,500. This value was derived via two different price per square foot analyses. One analysis utilized four purportedly comparable properties, and the other utilized nineteen purportedly comparable properties. Mr. Smethers conceded that this is a "less traditional" approach to estimating value. Indeed, in these analyses, other than being located in neighborhoods close to the subject property, there is no evidence of the comparability of most of the purportedly comparable properties to the subject property. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. Additionally, Mr. Smethers did not make any adjustments to account for differences between the properties. Thus, the Board also finds that Mr. Smethers' price per square foot analysis lacks probative value.
30. Finally, Mr. Smethers argued even if neither the sales-comparison analysis nor the price per square foot analysis were compelling by themselves, the "summative value" or preponderance of the evidence is sufficient to make a prima facie case. The Board disagrees. Neither analysis is probative by itself. Together, they point to two different value conclusions. Thus, the Respondent failed to make a prima facie case the 2019 assessment should be \$55,500.
31. Accordingly, the Petitioner is entitled to have his 2019 assessment reduced to the 2018 level of \$52,200. It is unclear whether the Petitioner sought a lower value. The bulk of the Petitioner's case was a commentary on the poor condition of his neighborhood, and his presentation failed to indicate a market value-in-use of his property. To the extent the

Petitioner sought a value lower than \$52,200, he failed to offer any market based evidence supporting an alternative value.³

SUMMARY OF FINAL DETERMINATION

32. The Board finds for the Petitioner. The subject property's 2019 assessment must be reduced to \$52,200.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

³ In an attachment to the Petitioner's Form 131, Mr. Brandenburg stated "I would like it to go back to the \$27,000 to \$30,000 range." Again, the Petitioner failed to offer any market based evidence to support this value range.